

|                   |   |
|-------------------|---|
| Document Name     | CITIZEN SUIT: COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION |
| Author            | Woolner, Rhodora  |
| Document Type     | Pleading  |
| LSA(s)            |   |
| Co-Counsel        |   |
| Co-Counsel LSA(s) |   |
| Distribution List | Woolner, Rhodora (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD;Duncan, Katherine (ENRD)      |
| Fileroom          | LPS - Main Justice  |
| DJ#               |   |
| Case Name         |   |
| Court             |   |
| Notes             | SCANNED/UNASSIGNED  |
| Double-Sided      |   |
| Received Date     | 8/21/2009   |
| Urgent            |   |
| Oversize          |   |
| Bound Document    |   |

1 Jack Silver, Esq. SBN 160575  
2 Law Office of Jack Silver  
3 Post Office Box 5469  
4 Santa Rosa, CA 95402-5469  
5 Tel. (707) 528-8175  
6 Fax. (707) 528-8675  
7 lhm28843@sbcglobal.net

8 Attorneys for Plaintiff  
9 NORTHERN CALIFORNIA RIVER WATCH

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER  
13 WATCH, a non-profit corporation,

CASE NO. C09-03737 SC

**PROOF OF SERVICE**

14 Plaintiff,

15 v.

16 KIMBER MANAGEMENT, LLC, et al,

17 Defendants

---

18 9 AUG 21 P 3:40

DEPT. OF JUSTICE - ENRD  
ENVIRONMENT DIVISION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 202, Santa Rosa, CA 95404. On August 19, 2009, I served the following described document(s):

**Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation  
[Environmental - RCRA - 42 U.S.C. § 6901 *et seq.*; Clean Water Act -  
33 U.S.C. § 1251 *et seq.*] Filed August 14, 2009**

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Citizen Suit Coordinator  
U.S. Dept. of Justice  
Environmental & Natural Resource Division  
Law and Policy Section  
P.O. Box 4390  
Ben Franklin Station  
Washington, DC 20044-4390

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on August 19, 2009 at Santa Rosa, California.

  
WOJCIECH P. MAKOWSKI

PAGE  
BREAK

1 Jack Silver, Esquire SBN# 160575  
2 Law Office of Jack Silver  
3 Post Office Box 5469  
4 Santa Rosa, California 95402-5469  
5 Telephone: (707) 528-8175  
6 Facsimile: (707) 528-8675  
7 lhm28843@sbcglobal.net

8 Attorneys for Plaintiff  
9 Northern California River Watch

ORIGINAL  
FILED

AUG 14 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

SC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA RIVER  
11 WATCH, a 501(c)(3) non-profit  
12 public benefit Corporation,

13 Plaintiff,

14 v.

15 KIMBER MANAGEMENT, LLC and  
16 DOES 1-30 Inclusive,

17 Defendants.

Cv. 09 CASE NO. 9

37373

COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES,  
RESTITUTION AND REMEDIATION  
(Environmental - RCRA - 42 U.S.C. § 6901  
*et seq.*; Clean Water Act - 33 U.S.C. § 1251  
*et seq.*)

18 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter, "RIVER  
19 WATCH") by and through its attorneys, and for its Complaint against Defendants, KIMBER  
20 MANAGEMENT, LLC and DOES 1-30 Inclusive (collectively hereafter, "DEFENDANTS"),  
21 states as follows:

22  
23 **I. NATURE OF THE CASE**

24 1. This is a citizens' suit brought against DEFENDANTS under the citizen suit  
25 enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*,  
26 (hereafter, "RCRA"), specifically RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), RCRA §  
27 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), RCRA § 3004, 42 U.S.C. § 6924; RCRA § 3005, 42  
28

1 U.S.C. § 6924, and RCRA § 4005; 42 U.S.C. § 6945, to stop DEFENDANTS from repeated and  
2 ongoing violations of the RCRA. These violations are detailed in the Notice of Violations and Intent  
3 to File Suit (hereafter, "RCRA NOTICE"), attached hereto as EXHIBIT A and made part of these  
4 pleadings.

5 2. As described in the RCRA NOTICE and below, RIVER WATCH alleges  
6 DEFENDANTS are in violation of a permit, standard, regulation, condition, requirement,  
7 prohibition, or order which has become effective pursuant to the RCRA [42 U.S.C. § 6972(a)(1)(A);  
8 42 U.S.C. § 6924, 42 U.S.C. § 6925; 42 U.S.C. § 6945.]

9 3. As described in the RCRA NOTICE and below, RIVER WATCH alleges  
10 DEFENDANTS to be past or present generators, past or present transporters, or past or present  
11 owners or operators of a treatment, storage, or disposal facility, which has contributed or which is  
12 contributing to the past or present handling, storage, treatment, transportation, or disposal of a solid  
13 or hazardous waste which may present an imminent and substantial endangerment to health or the  
14 environment. [42 U.S.C. § 6972(a)(1)(B); 42 U.S.C. § 6924, 42 U.S.C. § 6925; 42 U.S.C. § 6945.]

15 4. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,  
16 the imposition of civil penalties, and other relief for DEFENDANTS' violations of the RCRA's  
17 standards and regulations applicable to the use and storage of petroleum pollutants, toxic metals  
18 such as lead and other pollutants, and for DEFENDANTS' violation of the RCRA's prohibition  
19 against creating an imminent and substantial endangerment to human health or the environment.

20 5. RCRA §3005, 42 U.S.C. § 6925, requires facilities to obtain permits for the handling,  
21 storage, treatment, transportation and/or disposal of hazardous waste.

22 6. RCRA § 3004, 42 U.S.C. § 6924, requires owners and operators of hazardous waste  
23 treatment, storage, and disposal facilities to follow enumerated standards. These requirements are  
24 enumerated in 40 C.F.R. Part 264 and include requirements for General Facility Standards (Subpart  
25 B), Preparedness and Prevention (Subpart C), Contingency Plans and Emergency Procedures  
26 (Subpart D), Releases from Solid Waste Management Units (Subpart F), Closure and Post-Closure  
27 (Subpart G), Financial Requirements (Subpart H), Surface Impoundments (Subpart K), Waste Piles  
28

(Subpart L), Land Treatment (Subpart M), Landfills (Subpart N), and Miscellaneous Units (Subpart X).

7. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits citizen suits against any person alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order effective pursuant to the RCRA. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) permits citizen suits to enjoin the handling, storage, treatment, transportation and/or disposal of hazardous or solid waste which creates or may create an imminent and substantial endangerment to human health or the environment. Pursuant to RCRA §§ 3008(a), 3008(g) and 7002(a), 42 U.S.C. §§ 6928(a), 6928(g) and 6972(a), each violation of the RCRA subjects the violator to a penalty of up to \$37,500.00 per day /per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition, the RCRA provides for injunctive relief pursuant to RCRA §§ 3008(a) and 7002(a), 42 U.S.C. §§ 6928(a) and 6972(a).

8. This is also a citizens' suit for relief brought by RIVER WATCH under the Clean Water Act (hereafter, "CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, specifically 33 U.S.C. § 1311, 33 U.S.C. § 1342, and 33 U.S.C. § 1365, to stop DEFENDANTS from repeated and ongoing violations of the Act. These violations are detailed in the Notices of Violations and Intent to File Suit (hereafter, "CWA NOTICE") made part of the pleadings of this case and attached hereto as EXHIBIT B. DEFENDANTS are either discharging pollutants from a point source without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of 33 U.S.C. § 1311(a), discharging storm water without a NPDES permit in violation of 33 U.S.C. § 1342(p) or routinely violating the terms of the NPDES permits which regulate stormwater discharges.

9. CWA § 402, 33 U.S.C. § 1342 requires dischargers to obtain a NPDES permit to discharge any pollutant into waters of the United States. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant unless the discharge is in compliance with various enumerated sections of the CWA, including CWA § 402, 33 U.S.C. § 1342.

10. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant unless the discharge is in compliance with various enumerated sections of the CWA, including CWA §

1 402, 33 U.S.C. § 1342. The CWA provides for injunctive relief pursuant to CWA §§ 309(a) and  
2 505(d), 33 U.S.C. §§ 1319(a), 1365(d).

3 11. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,  
4 the imposition of civil penalties, and other relief for DEFENDANTS' violations of the CWA.

5  
6 **II. PARTIES**

7 12. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit  
8 public benefit corporation duly organized under the laws of the State of California, with  
9 headquarters and main office located at 500 North Main Street, Suite 110, Sebastopol, Sonoma  
10 County, California. RIVER WATCH is dedicated to protect, enhance and help restore the surface  
11 and subsurface waters of Northern California. RIVER WATCH's members live in Northern  
12 California and in Marin County where the Site and facilities under DEFENDANTS' operation  
13 and/or control, identified in the RCRA NOTICE, the CWA NOTICE and below, and which are the  
14 subject of this Complaint, are located. RIVER WATCH's members live nearby to waters affected  
15 by DEFENDANTS' illegal discharges as alleged in this Complaint. RIVER WATCH's members  
16 have interests in the watersheds which are or may be adversely affected by DEFENDANTS'  
17 violations of the RCRA and the CWA as alleged in this Complaint. Said members use the effected  
18 waters and watershed areas for domestic water, recreation, sports, fishing, swimming, hiking,  
19 photography, nature walks, religious, spiritual and shamanic practices, and the like. Furthermore,  
20 the relief sought will redress the injury in fact to RIVER WATCH and its members, the likelihood  
21 of future injury and interference with the interests of said members.

22 13. Defendant, KIMBER MANAGEMENT, LLC is a limited liability corporation  
23 registered as such with the State of California with administrative offices located in the City of  
24 Sausalito, County of Marin, State of California. RIVER WATCH is informed and believes and on  
25 such information and belief alleges that KIMBER MANAGEMENT, LLC is and was at all times  
26 relevant to this Complaint, the owner and/or operator of the real property on which the Site  
27 identified the RCRA NOTICE, the CWA NOTICE and in this Complaint is situated.



1           14. RIVER WATCH is informed and believes and on such information and belief alleges  
2 that DEFENDANTS named herein as DOES 1 - 30, Inclusive, respectively, are persons,  
3 partnerships, corporations or entities, who are, or were, responsible for, or in some way contributed  
4 to, the violations which are the subject of this Complaint or are, or were, responsible for the  
5 maintenance, supervision, management, operations, or insurance coverage of DEFENDANTS'  
6 facilities or operations on the Site as identified in the RCRA NOTICE, the CWA NOTICE and this  
7 Complaint. The names, identities, capacities, or functions of DEFENDANTS named herein as  
8 DOES 1 - 30, Inclusive are presently unknown to RIVER WATCH. RIVER WATCH shall seek  
9 leave of court to amend this Complaint to insert the true names of said DOES Defendants when the  
10 same have been ascertained.

11  
12 **III. JURISDICTIONAL ALLEGATIONS**

13           15. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1), 42  
14 U.S.C. § 6972(a)(1), which states in part,

15           “. . . any person may commence a civil action on his own behalf (A) against any  
16 person . . . who is alleged to be in violation of any permit, standard, regulation,  
17 condition requirement , prohibition or order which has become effective pursuant  
18 to this chapter, or (B) against any person . . . who has contributed or who is  
19 contributing to the past or present handling, storage, treatment, transportation or  
20 disposal of any solid or hazardous waste which may present an imminent and  
21 substantial endangerment to health or the environment.”

22           16. RIVER WATCH's members reside in the vicinity of, derive livelihoods from, own  
23 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds,  
24 land, rivers, and associated natural resources into which DEFENDANTS pollute, or by which  
25 DEFENDANTS' operations adversely affect those members' interests, in violation of RCRA §  
26 7002(a)(1)(A), 42 U.S.C. §6972(a)(1)(A) and RCRA § 7002 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B).  
27 The health, economic, recreational, aesthetic or environmental interests of RIVER WATCH and its  
28

1 members has been, are being, and will continue to be adversely affected by DEFENDANTS'  
2 unlawful violations as alleged herein. RIVER WATCH contends there exists an injury in fact,  
3 causation of that injury by the DEFENDANTS' complained of conduct, and a likelihood that the  
4 requested relief will redress that injury.

5 17. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), RIVER WATCH gave  
6 statutory notice of the RCRA violations alleged in this Complaint prior to the commencement of  
7 this lawsuit by way of the RCRA NOTICE to: (a) DEFENDANTS, (b) the United States  
8 Environmental Protection Agency, both Federal and Regional, (c) the State of California Water  
9 Resources Control Board, and (d) the solid waste management agency for the State of California -  
10 Integrated Waste Management Board, and Department of Toxic Substances Control.

11 18. Pursuant to RCRA §§ 7002(a) and (b), 42 U.S.C. §§ 6972(a) and (b), venue lies in  
12 this District as the Site, facilities and operations under DEFENDANTS' ownership or control and  
13 upon which illegal activities occurred which are the source of the violations complained of in this  
14 Complaint, are located within this District.

15 19. Subject matter jurisdiction is also conferred upon this Court by CWA § 505(a)(1),  
16 33 U.S.C. § 1365(a)(1), which states in part that,

17 "any citizen may commence a civil action on his own behalf against any person . .  
18 . . who is alleged to be in violation of (A) an effluent standard or limitation . . . . or  
19 (B) an order issued by the Administrator or a State with respect to such a standard  
20 or limitation." For purposes of Section 505, "the term 'citizen' means a person or  
21 persons having an interest which is or may be adversely affected."

22 20. RIVER WATCH's members reside in the vicinity of, derive livelihoods from, own  
23 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds,  
24 land, rivers, and associated natural resources into which DEFENDANTS pollute, or by which  
25 DEFENDANTS' operations adversely affect those RIVER WATCH's interests, in violation of  
26 CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), and CWA § 402,  
27 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental interests of  
28

1 RIVER WATCH and its members may be, have been, are being, and will continue to be adversely  
2 affected by DEFENDANTS' unlawful violations. RIVER WATCH contends there exists an injury  
3 in fact, causation of that injury by DEFENDANTS' complained of conduct, and a likelihood that  
4 the requested relief will redress that injury.

5 21. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), RIVER WATCH gave  
6 statutory notice of the CWA violations alleged in this Complaint to: (a) DEFENDANTS, (b) the  
7 United States EPA, Federal and Regional, and (c) the State of California Water Resources Control  
8 Board.

9 22. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has  
10 been served on the United States Attorney General and the Administrator of the Federal EPA.

11 23. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as  
12 the facilities for wastewater treatment and sewage collection under DEFENDANTS' operation  
13 and/or control, and the Site, facilities and operations under DEFENDANTS' ownership or control  
14 and upon which illegal activities occurred which are the source of the violations complained of in  
15 this Complaint, are located within this District.

#### 16 17 **IV. STATEMENT OF FACTS**

18 24. RIVER WATCH is informed and believes, and on said information and belief alleges  
19 that DEFENDANTS are past or present generators, past or present transporters, or past or present  
20 owners and/or operators of the Site or facilities identified in the RCRA NOTICE, and have  
21 contributed or are contributing to the past or present handling, storage, treatment, transportation,  
22 or disposal of solid or hazardous waste which may present an imminent or substantial endangerment  
23 to health or the environment. Furthermore, DEFENDANTS' handling, use, transport, treatment,  
24 storage or disposal of waste at the Site or facilities identified in the RCRA NOTICE has violated  
25 and continues to violate permits, standards, regulations, conditions, requirements or prohibitions  
26 effective pursuant to the RCRA regarding hazardous or solid waste. [42 U.S.C. §§ 6972(a)(1)(A)  
27 and (B)]. RIVER WATCH is informed and believes, and on said information and belief alleges that  
28

1 DEFENDANTS have no RCRA-authorized permits authorizing the activities related to hazardous  
2 wastes described in the RCRA NOTICE.

3 25. Regulatory agencies have designated surface waters and groundwater in the area of  
4 California identified in the RCRA NOTICE as capable of supporting multiple beneficial uses  
5 including domestic water supply, and have established Maximum Contaminant Levels ("MCLs")  
6 and Water Quality Objectives ("WQOs") for these pollutants in surface and ground waters.

7 26. The pollutants identified in the RCRA NOTICE are known carcinogens or  
8 reproductive toxins, and have been listed chemicals under Proposition 65. Surface waters and  
9 groundwater at and around the Site and facilities identified in the RCRA NOTICE are potential  
10 sources of drinking water under applicable Regional Water Quality Control Board Plans also known  
11 as Basin Plans. RIVER WATCH is informed and believes, and on said information and belief  
12 alleges, that DEFENDANTS in the course of doing business have discharged petroleum pollutants,  
13 toxic metals and other pollutants to surface waters and groundwater at and around the Site and  
14 facilities as discussed in the RCRA NOTICE.

15 27. DEFENDANTS' handling, use, transport, treatment, storage or disposal of pollutants  
16 at the Site or facilities identified in the RCRA NOTICE has occurred in a manner which has allowed  
17 significant quantities of hazardous constituents to be discharged to soil, groundwater and surface  
18 waters beneath and around the Site and beneath and around adjacent properties as well as off site.

19 28. To date, the levels of pollutants remain high above the allowable MCLs or WQOs for  
20 said constituents, creating an imminent and substantial endangerment to public health or the  
21 environment.

22 29. RIVER WATCH is informed and believes, and on said information and belief alleges  
23 that the activities of DEFENDANTS as alleged in the RCRA NOTICE have been both knowing  
24 and/or intentional. DEFENDANTS have discharged, or are intentionally and illegally continuing  
25 to discharge hazardous waste in violation of the RCRA. DEFENDANTS have known of the  
26 contamination at the Site or facilities identified in the RCRA NOTICE for at least 5 or more years,  
27 or are also aware that continuing discharges or failure to properly remediate the pollution allows  
28

1 the contamination to migrate through the ground or groundwater at or adjacent to said Site, or to  
2 continually contaminate or re-contaminate actual or potential sources of drinking water as well as  
3 groundwater or surface waters.

4 30. Violations of this or other statutes as alleged in this Complaint are a major cause of  
5 the continuing decline in water quality, or a continuing threat to existing or future drinking water  
6 supplies in California. With every discharge, groundwater and surface water supplies are  
7 contaminated. These discharges can or must be controlled in order for the groundwater and surface  
8 water supply to be returned as a safe source of drinking water.

9 31. The CWA regulates the discharge of pollutants into navigable waters. The statute is  
10 structured in such a way that all discharge of pollutants is prohibited with the exception of several  
11 enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a  
12 NPDES permit pursuant to the Act, to discharge designated pollutants at certain levels subject to  
13 certain conditions. Without a NPDES permit, **all surface and subsurface** discharges from  
14 DEFENDANTS to waters of the United States are illegal.

15 32. DEFENDANTS have no NPDES permit allowing them to discharge pollutants from  
16 the Site identified in the CWA NOTICE to waters of the United States as required by CWA §  
17 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as  
18 well as CWA § 402(p), 33 U.S.C. 1342(p). The Act prohibits storm water discharges without a  
19 permit -33 U.S.C. § 1342; 40 CFR § 122.26.

20 33. RIVER WATCH is informed and believes, and on said information and belief alleges  
21 that DEFENDANTS are discharging pollutants found at the Site and facilities identified in the  
22 RCRA NOTICE and CWA NOTICE A from the Site and various point sources within the Site to  
23 waters of the United States.

24 34. RIVER WATCH is informed and believes, and on said information and belief alleges  
25 that the liability of DEFENDANTS stems from their ownership or operation of the Site, or due to  
26 the activities conducted on the Site by DEFENDANTS, their subsidiaries, contractors, employees  
27 or agents.

1        35.    The CWA is a strict liability statute with a five year statute of limitations. The range  
2 of dates covered by the CWA NOTICE is the five year statute of limitations as discussed in the  
3 CWA NOTICE.

4        36.    The majority of the violations identified in the CWA NOTICE such as discharging  
5 pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES  
6 permit, failure to implement the requirements of the Act, failure to meet water quality objectives,  
7 etc., are continuous, and therefore each day is a violation. RIVER WATCH alleges that all  
8 violations set forth in the CWA NOTICE are continuing in nature or will likely continue after the  
9 filing of a lawsuit. Specific dates of violations are evidenced in DEFENDANTS' own records (or  
10 lack thereof) or files and records of other regulatory agencies including the Regional Quality  
11 Control Board ("RWQCB"), GeoTracker, Marin County Health and local police and fire  
12 departments.

13  
14 **V.    FIRST CLAIM FOR RELIEF**

15 **Violation of Any Permit, Standard, Regulation, Condition, Requirement,**  
16 **Prohibition, or Order [42 U.S.C. § 6972(a)(1)(A)]**

17        RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 36 and  
18 the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed or believes, and  
19 based on such information or belief alleges as follows:

20        37.    RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) provides that any person may  
21 commence a civil action against any person or governmental entity alleged to be in violation of any  
22 permit, standard, regulation, condition, requirement, prohibition, or order which has become  
23 effective pursuant to the RCRA. Civil penalties may be assessed against any person or entity in  
24 violation of such permits, etc. pursuant to the RCRA under the provisions of 42 U.S.C. §§ 6928  
25 (a) or (g).

26        38.    DEFENDANTS have failed to comply with the statutory or regulatory prevention,  
27 detection, monitoring, or remediation requirements imposed under the RCRA or described in the  
28 RCRA NOTICE.

1           39.     DEFENDANTS have no permit issued under the RCRA or by the state of California  
2 for the use, handling, storage, transportation, disposal or treatment of hazardous or solid waste at  
3 the Site or facilities identified in the RCRA NOTICE..

4           40.     DEFENDANTS' operations at the Site or facilities identified in the RCRA NOTICE  
5 include unlawful open dumping as that term is used in the RCRA, by discharging petroleum  
6 pollutants, and toxic metals such as lead to the open ground allowing these pollutants to discharge  
7 to both groundwater or surface waters. The Site identified in the RCRA NOTICE does not qualify  
8 as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous  
9 waste.

10          41.     DEFENDANTS are in violation of Subtitle C of the RCRA (42 U.S.C. § 6921 *et seq.*)  
11 (aka subchapter III) by failing to properly: identify, label or list hazardous materials; keep records  
12 of their hazardous waste activities including their use, handling, storage, transportation or treatment  
13 of hazardous or solid waste; take proper measures to protect human health or the environment;  
14 monitor their activities; or, acquire RCRA-authorized permits.

15          42.     DEFENDANTS have in the past or are knowingly now transporting, treating, storing,  
16 disposing of or exporting hazardous wastes identified or listed under RCRA Subtitle C which places  
17 persons in imminent danger of death or serious bodily injury.

18          43.     Information currently available to RIVER WATCH indicates that DEFENDANTS'  
19 violation of any permit, standard, regulation, condition, requirement, prohibition, or order which  
20 has become effective pursuant to RCRA § 7002(a)(1)(A) has occurred every day since at least May  
21 1, 2004, or on numerous separate occasions, and that those violations are continuing.

22          44.     The continuing activities by DEFENDANTS as alleged herein irreparably harm  
23 RIVER WATCH and its members, for which harm RIVER WATCH has no plain, speedy or  
24 adequate remedy at law.

25                 Wherefore, RIVER WATCH prays judgment against DEFENDANTS as set forth hereafter.  
26  
27  
28

1 **VI. SECOND CLAIM FOR RELIEF**

2 **Imminent and Substantial Endangerment to Health or to the Environment**  
3 **[42 U.S.C. § 6972(a)(1)(B)]**

4 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 44 and  
5 the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed or believes, and  
6 based on such information and belief alleges as follows:

7 45. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may  
8 commence a civil action against any person or governmental entity including a past or present  
9 generator, transporter, owner or operator of a treatment, storage or disposal facility who has  
10 contributed to the past or present storage, treatment, transportation, or disposal of any solid or  
11 hazardous waste which may present an imminent and substantial endangerment to health or to the  
12 environment. Civil penalties may be assessed against any person or entity in violation of this  
13 section, under the provisions of 42 U.S.C. § 6928 (a) or § 6928 (g).

14 46. The aforementioned pollutants are known carcinogens or reproductive toxins, or when  
15 released into the environment in sufficient quantity pose an imminent or substantial risk to public  
16 health or to the environment in general. The amounts of petroleum pollutants and other toxic metals  
17 including lead used, handled, stored, transported, disposed of or treated by DEFENDANTS are in  
18 sufficient quantity to pose an imminent or substantial risk to both the environment or to human  
19 health.

20 47. DEFENDANTS are of the class of entities covered by this section of the RCRA, as  
21 DEFENDANTS are past or present generators, past or present transporters, or past or present  
22 owners or operators of a treatment, storage, or disposal facility, which has contributed or is  
23 contributing to the past or present storage, treatment, transportation, or disposal of any solid or  
24 hazardous waste which may present an imminent and substantial endangerment to health or the  
25 environment.

26 48. DEFENDANTS are in violation of RCRA Subtitle C (42 U.S.C. § 6921 *et seq.*) (aka  
27 subchapter III) by failing to properly: identify, label or list hazardous materials; keep records of  
28 their hazardous waste activities including their use, hauling, storage, transportation or treatment of



1 hazardous or solid waste; take proper measures to protect human health or the environment; monitor  
2 their activities; or, acquire RCRA-authorized permits. DEFENDANTS' violations of RCRA  
3 Subtitle C may and do present imminent and substantial risk to both the environment or to human  
4 health.

5 49. DEFENDANTS' knowing transport, treatment, storage, disposal or exporting of  
6 hazardous wastes identified or listed under RCRA Subtitle C places persons in imminent danger of  
7 death or serious bodily injury.

8 50. Continuing acts or failure to act by DEFENDANTS to address these violations will  
9 irreparably harm RIVER WATCH and its members for which harm RIVER WATCH has no plain,  
10 speedy or adequate remedy at law.

11 Wherefore, RIVER WATCH prays judgment against DEFENDANTS as set forth hereafter.

## 12 13 **VII. THIRD CLAIM FOR RELIEF**

14 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition,**  
15 **or Order [42 U.S.C. § 6972(a)(1)(A)]; Imminent and Substantial Endangerment to**  
16 **Health or to the Environment [42 U.S.C. § 6972(a)(1)(B)] specifically: Violation of**  
17 **Procedural and Substantive Requirements of RCRA (42 U.S.C. § 6924)**

18 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 50 and  
19 the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed or believes, and  
20 on such information and belief alleges as follows:

21 51. DEFENDANTS have not complied with any of the procedural and substantive  
22 requirements of RCRA § 3004, 42 U.S.C. § 6924.

23 52. These requirements are enumerated in 40 C.F.R. Part 264 and include requirements  
24 for General Facility Standards (Subpart B), Preparedness and Prevention (Subpart C), Contingency  
25 Plans and Emergency Procedures (Subpart D), Releases from Solid Waste Management Units  
26 (Subpart F), Closure and Post-Closure (Subpart G), Financial Requirements (Subpart H), Surface  
27 Impoundments (Subpart K), Waste Piles (Subpart L), Land Treatment (Subpart M), Landfills  
28 (Subpart N), and Miscellaneous Units (Subpart X).

53. DEFENDANTS' failure to comply with these requirements is a violation of RCRA § 3004, 42 U.S.C. § 6924.

54. Information currently available to RIVER WATCH indicates that DEFENDANTS' handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation of RCRA § 3004 has occurred every day since at least May 1, 2004, or on numerous separate occasions, and that those violations are continuing.

55. The continuing activities by DEFENDANTS as alleged herein irreparably harm RIVER WATCH and its members, for which harm RIVER WATCH has no plain, speedy or adequate remedy at law.

Wherefore, RIVER WATCH prays judgment against DEFENDANTS as set forth hereafter.

#### **VIII. FOURTH CLAIM FOR RELIEF**

**Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition, or Order [42 U.S.C. § 6972(a)(1)(A)]; Imminent and Substantial Endangerment to Health or to the Environment [42 U.S.C. § 6972(a)(1)(B)] specifically Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous Waste (42 U.S.C. § 6925)**

RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 55 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed or believes, and on such information and belief alleges as follows:

56. DEFENDANTS' deposition and maintenance of hazardous waste as described herein causes and has caused the generation and discharge to the environment of hazardous waste.

57. DEFENDANTS have installed and maintained a system of conveyances to dispose of the hazardous generated and released from the Site and facilities identified in the RCRA NOTICE.

58. DEFENDANTS do not possess permits for the handling, storage, treatment, transportation, and/or disposal of their hazardous or solid waste at the Site and facilities identified in the RCRA NOTICE.

1           59. DEFENDANTS' unpermitted handling, storage, treatment, transportation and/or  
2 disposal of hazardous waste is a violation of RCRA § 3005, 42 U.S.C. § 6925.

3           60. Information currently available to RIVER WATCH indicates that DEFENDANTS'  
4 handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation  
5 of RCRA § 3004 has occurred every day since at least May 1, 2004, or on numerous separate  
6 occasions, and that those violations are continuing.

7           61. The continuing activities by DEFENDANTS as alleged herein irreparably harm  
8 RIVER WATCH and its members, for which harm RIVER WATCH has no plain, speedy or  
9 adequate remedy at law.

10           Wherefore, RIVER WATCH prays judgment against DEFENDANTS as set forth hereafter.

11  
12 **IX. FIFTH CLAIM FOR RELIEF**

13 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition,**  
14 **or Order [42 U.S.C. § 6972(a)(1)(A)]; Imminent and Substantial Endangerment to**  
15 **Health or to the Environment [42 U.S.C. § 6972(a)(1)(B)] specifically: Prohibition**  
**Against Open Dumping (42 U.S.C. § 6945)**

16           RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 61 and  
17 the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed or believes, and  
18 on such information and belief alleges as follows:

19           62. DEFENDANTS have engaged in open dumping by their discharge of hazardous waste  
20 to open ground where it will contaminate and has contaminated the soils, groundwater and surface  
21 waters as described herein.

22           63. DEFENDANTS' Site as identified in the RCRA NOTICE does not qualify as a  
23 landfill under 42 U.S.C. § 6944 and does not qualify as a facility for the disposal of hazardous  
24 waste.

25           64. DEFENDANTS have no RCRA-authorized permit for disposal, storage or treatment  
26 of solid or hazardous waste of the type currently and historically discharged at the identified Site.

1           65     Information currently available to RIVER WATCH indicates that DEFENDANTS'  
2 open dumping in violation of RCRA § 4005 has occurred every day since at least May 1, 2004, or  
3 on numerous separate occasions, and that those violations are continuing.

4           66.    The continuing activities by DEFENDANTS as alleged herein irreparably harm  
5 RIVER WATCH and its members, for which harm RIVER WATCH has no plain, speedy or  
6 adequate remedy at law.

7           Wherefore, RIVER WATCH prays judgment against DEFENDANTS as set forth hereafter.  
8

9   **X.     SIXTH CLAIM FOR RELIEF**

10           **Violation of the CWA, 33 U.S.C. § 1342 (a) and (b), 33 U.S.C. § 1311, Discharge**  
11           **of Pollutants from a Point Source Must be Regulated by a NPDES Permit**

12           RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1  
13 through 66 above, including the CWA NOTICE as though fully set forth herein. RIVER WATCH  
14 is informed or believes, and based on such information or belief alleges as follows:

15           67.    DEFENDANTS have violated and continue to violate the CWA as evidenced by the  
16 discharges of pollutants from a point source without a NPDES permit in violation of CWA § 301,  
17 33 U.S.C. § 1311.

18           68.    The violations of DEFENDANTS are ongoing and will continue after the filing of this  
19 Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur  
20 prior to trial, but for which data may not have been available or submitted or apparent from the face  
21 of the reports or data submitted by DEFENDANTS to the Regional Water Quality Control Board  
22 or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will file additional  
23 amended complaints if necessary to address DEFENDANTS' State and Federal violations which  
24 may occur after the filing of this Complaint. Each of DEFENDANTS' violations is a separate  
25 violation of the CWA.

26           69.    RIVER WATCH avers and believes and on such belief alleges that without the  
27 imposition of appropriate civil penalties and the issuance of appropriate equitable relief,  
28 DEFENDANTS will continue to violate the CWA as well as State and Federal standards with

1 respect to the enumerated discharges and releases alleged herein. RIVER WATCH avers and  
2 believes and on such belief alleges that the relief requested in this Complaint will redress the injury  
3 to RIVER WATCH and its members, prevent future injury, and protect the interests of RIVER  
4 WATCH and its members which are or may be adversely affected by DEFENDANTS' violations  
5 of the CWA, as well as other State and Federal standards.

6  
7 **XI. SEVENTH CLAIM FOR RELIEF**

8 **Violation of the CWA, 33 U.S.C. § 1342(p), Discharge of Stormwater or Stormwater**  
9 **Containing Pollutants Without a NPDES Permit or in Violation of the California**  
10 **General Stormwater Permit**

11 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1  
12 through 69 above, including the CWA NOTICE, as though fully set forth herein. RIVER WATCH  
13 is informed or believes, and based on such information or belief alleges as follows:

14 70. DEFENDANTS do not comply with CWA § 402(p) which requires dischargers to  
15 acquire a NPDES permit for the discharge of stormwater or to file for coverage under California's  
16 General Stormwater permit program ("General Permit").

17 71. The General Permit prohibits discharges of storm water contaminated with industrial  
18 pollutants, which are not otherwise regulated by a NPDES permit, to storm sewer systems or waters  
19 of the United States.

20 72. DEFENDANTS have violated and continue to violate the CWA and the General  
21 Permit as evidenced by the discharges of storm water containing pollutants to the affected water  
22 bodies identified in the CWA NOTICE in violation of CWA § 301 and CWA § 402(p).

23 73. DEFENDANTS have violated and continue to violate the General Permit. Any  
24 violations of the General Permit are violations of the CWA. The violations of DEFENDANTS are  
25 ongoing and will continue after the filing of this Complaint.

26 74. RIVER WATCH avers and believes that without the imposition of appropriate civil  
27 penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate  
28 the CWA as well as State and Federal standards with respect to the enumerated discharges and

1 releases identified in the CWA NOTICE. RIVER WATCH avers and believes that the relief  
2 requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent  
3 future injury, and protect the interests of RIVER WATCH and its members which interests are or  
4 may be adversely affected by DEFENDANTS' violations of the CWA, as well as other State and  
5 Federal standards.

6  
7 **XII. PRAYER FOR RELIEF**

8 WHEREFORE, RIVER WATCH prays this Court grant the following relief:

- 9 1. Declare DEFENDANTS to have violated or to be in violation of the RCRA;
- 10 2. Enjoin DEFENDANTS from continued violations of the RCRA;
- 11 3. Order DEFENDANTS to fully remediate all of the damages caused by their violations of the  
12 RCRA;
- 13 4. Order DEFENDANTS to pay civil penalties on a per violation per day basis for their  
14 violations of the RCRA;
- 15 5. Declare DEFENDANTS to have violated or to be in violation of the CWA;
- 16 6. Enjoin DEFENDANTS from continued violations of the CWA;
- 17 7. Order DEFENDANTS to fully remediate all of the damages caused by their violations of the  
18 CWA;
- 19 8. Order DEFENDANTS to pay civil penalties on a per violation per day basis for their  
20 violations of the CWA;
- 21 9. Order DEFENDANTS to pay RIVER WATCH's reasonable attorneys' fees or costs  
22 (including expert witness fees), as provided by law; or
- 23 10. Grant such other or further relief as may be just or proper.

24  
25 DATED: August 13, 2009

  
26 JACK SILVER  
27 Attorney for Plaintiff  
28 NORTHERN CALIFORNIA RIVER WATCH

# **EXHIBIT A**

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



**VIA REGISTERED MAIL -  
RETURN RECEIPT REQUESTED**

May 4, 2009

Bruce O. Huff, Managing Partner  
Kimber Management, LLC  
10 Liberty Ship Way, #150  
Sausalito, CA 94965

**Re: Notice of Violations and Intent to File Suit Under the Resource  
Conservation and Recovery Act ("RCRA")**

Dear Mr. Huff and Kimber Management, LLC:

## **NOTICE**

On behalf of Northern California River Watch ("River Watch"), I am providing statutory notification ("Notice") to Bruce O. Huff and Kimber Management, LLC, (hereafter identified as "Polluters"), of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA," 42 U.S.C. § 6901 et seq.), in conjunction with the continuing pollution at the Site described and identified in the BACKGROUND section of this Notice below.

River Watch hereby notifies Polluters that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against Polluters on the following grounds:

1. Polluters' use and storage of petroleum hydrocarbons, toxic metals and other pollutants at the Site identified in this Notice, has and continues to violate permits, standards, regulations, conditions, requirements or prohibitions



effective pursuant to the RCRA regarding storage of pollutants. [42 U.S.C. § 6972(a)(1)(A)];

2. Polluters' operations at the Site identified in this Notice have caused contamination of soil and ground and surface waters which presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

Under RCRA, 42 U.S.C. § 6972(a)(1)(A), notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA, shall include sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

1. **Specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated**

The RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. The goals of the RCRA are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes.

The Environmental Protection Agency's ("EPA") waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to the RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

Polluters have no hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at the Site identified in this Notice. Polluters' use, handling, disposal and storage of waste at that Site has and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to the RCRA regarding hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

2. **The Activity Alleged to Constitute a Violation**

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary, the RCRA requires that the environment and the public be protected from the hazardous wastes

generated by Polluters. The pollutants found at the Site identified in this Notice constitute hazardous waste under the RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated. The RCRA specifically protects groundwater.

The liability of Polluters stems from either their ownership of the Site or activities conducted on the Site by entities which violated the RCRA and have contributed to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also alleges Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA.

Polluters are guilty of open dumping as that term is used in the RCRA, by discharging pollutants including petroleum hydrocarbons and toxic metals, and allowing these pollutants to discharge to the Site threatening ground and surface waters. The Site does not qualify as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous waste. Polluters have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically at the Site.

Polluters also have liability due to their ownership or operation of preferential pathways which have caused pollutants to be discharged to aquifers, surface and groundwaters via Polluters' conduits facilitating pollutant migration and threatening a discharge to waters of the United States and contributing to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have caused contamination of soil, surface and ground waters and residential areas. The groundwater in this area is hydrologically connected to adjacent wetlands and the San Francisco Bay. These waters of the United States are already affected or are at imminent risk of contamination from the petroleum hydrocarbons and toxic metals at the Site. Contamination at the Site presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

### **3. The person or persons responsible for the alleged violation**

The person or persons responsible for the alleged violations are the addressees of this Notice, identified herein and collectively referred to as "Polluters" throughout this Notice.

**4. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.**

The RCRA is a strict liability statute. The range of dates covered by this Notice is May 4, 2004 through May 4, 2009. River Watch will from time to time update and supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to ground and surface waters, failure to obtain RCRA-authorized permits, failure to implement the requirements of the RCRA, failure to meet water quality objectives, etc., are continuous. Therefore, each day is a violation. River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Water Quality Control Board ("RWQCB"), GeoTracker, County Health and local police and fire departments.

**5. The full name, address, and telephone number of the person giving notice.**

The entity giving notice is Northern California River Watch, 500 North Main Street, Suite 110, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, E-mail US@ncriverwatch.org, referred to in this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire  
Law Offices of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. 707-528-8175  
Fax. 707-528-8675

The violations of Polluters as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected areas. The members of River Watch use the affected area for recreation, hiking, photography, nature walks sports, water, fishing, swimming, boating and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by the violations of the RCRA described herein.

## **BACKGROUND**

The site property which is the subject of this Notice is located in a light industrial area of the City of Sausalito, on the south side of Liberty Ship Way, and is approximately 3.8 acres in size. Currently, the property is developed with an office building in place.

In March of 1997, one 500-gallon gasoline underground storage tank ("UST") was removed from the site by AEI Consultants. Total petroleum hydrocarbons as gasoline (TPHg), and benzene remained in the sidewalls up to 370 milligrams per kilogram (mg/kg) and 0.066 mg/kg, respectively. The groundwater sample contained TPHg and benzene at 1,700 micrograms per liter ( $\mu\text{g/l}$ ) and 51  $\mu\text{g/l}$ , respectively, exceeding both Maximum Contaminant Levels and Water Quality Objectives set by the State of California. The stockpiled soil was not then removed from the site.

In January of 2000, the excavation was reopened and extended three feet to the north and south and five feet to the east and west from its original dimensions. Four sidewall samples and a groundwater sample were collected from the excavation. TPHg remained in the soil up to 150 mg/kg, detected in the north sidewall. TPHg and benzene were detected in the groundwater at 600 g/l and 0.76  $\mu\text{g/l}$ , respectively. An additional 3,000-gallon diesel UST was discovered on the northern portion of the property during storm drain installation activities. The tank was removed on March 29, 2000. Two samples were originally collected. Based upon their hydrocarbon content, the excavation was extended in each direction. High concentrations of TPHg, total petroleum hydrocarbons as diesel (TPHd), total petroleum oil and grease (POG), and lead remained in the west, south, and east sidewalls of the excavation. The highest concentrations were in the east sidewall with POG at 70,000 mg/kg and lead at 1,800 mg/kg.

Following the removal of a railroad spur, AEI Consultants collected soil samples from beneath and around the former spur. Elevated concentrations of TPHg, TPHd, and POG were detected above 1,000 mg/kg in several locations up to three feet below ground surface (bgs). Rocky fill material was encountered below 3 feet, which inhibited sample collection below this depth. An excavation was opened beneath the former railroad spur on February 9, 2000. At its greatest extent, the excavation was approximately 23 feet wide, 49 feet long and between 4 and 5 feet deep. A total of six-sidewall soil samples, one excavation bottom soil sample, and one groundwater sample were collected. TPHd and POG remained in the sidewalls up to 680 mg/kg and 4,300 mg/kg, respectively. The groundwater sample contained 7,600  $\mu\text{g/l}$  of TPH-d, 160  $\mu\text{g/l}$  of 1,2-dichlorobenzene, and 79  $\mu\text{g/l}$  of lead. All pollutants levels exceed California's Maximum Contaminant Levels and Water Quality Objectives.

During the installation of a storm drain system, the contractor identified two additional areas of visually impacted soil, which was removed by the developer and added to the stockpile created by the diesel tank removal and over-excavation. Light non-aqueous phase liquid (LNAPL) was observed floating on the water table in a number of borings. Sample analytical data revealed the bulk of the dissolved phase hydrocarbons were indicative of diesel fuel or fuel oil range hydrocarbons, with very low light range fuel components. In addition to hydrocarbons, several areas of high concentrations of lead, chromium VI, and nickel were observed. All of these toxic metals exceed California's Maximum Contaminant Levels and Water Quality Objectives. The source and extent of these toxic metals has not been determined. LNAPL remains in the area of the former diesel UST although regular removal efforts have reduced its measurable thickness. Residual adsorbed phase petroleum is present on site and around the release area.

The site is located at the margin of Richardson Bay on the eastern side of the Marin Peninsula, at a surveyed elevation of approximately 10 feet above mean sea level. The site is relatively flat, at the base of a slope rising to the southeast. Sediments of the site are mapped as artificial fill with the bedrock to the southeast comprised of mélange of the Franciscan Formation. The northeastern portion of the site and the land to the north appear to have been reclaimed from the Bay prior to the 1940s, based on aerial photograph review.

Drilling work has identified recent engineered import fill to depths of 1 to 3 feet throughout the site with other fill present locally to a depth of up to 10 feet. Drilling on the southern side of the property building has revealed well graded sand with varying clay and gravel content to a depth of 4.5 to 7 feet bgs, underlain by an approximately 3 foot section of wet, high organic content, bay mud clay. Below this, well graded sandy gravels were encountered to boring termination, at 11 to 12 feet bgs. To the north of the property boundary, soils to the east (AEI-19, AEI-23 to AEI-25) side tend to consist of predominately finer materials: clays with varying silt, sand and gravel content. The easternmost boring, AEI-18 encountered poorly graded medium sand to a depth of 7 feet underlain by well graded sand. Westward, gravel, clayey gravel, and silty and gravelly sand are present at varying depths and thicknesses interbedded with sandy and gravelly clay. In permeable sediments, groundwater was observed during drilling at depths ranging from approximately 4 to 7 feet bgs. Based on monitoring data, the water table beneath the site exists at approximately 4 to 6 feet bgs at mean tide. Water levels are tidally influenced. The nearest arm of the Bay is approximately 50 feet east of the property at neutral tide. A detailed history of the use of the USTs or the volume of material released is unknown. Mass of the plume has not been calculated.

Four soil vapor borings were advanced at and in the vicinity of the site (SV-1 through SV-4) during the recent investigation activities. The concentrations of TPHg and benzene in SV-2 exceeded their respective Effects Screening Levels values.

The two primary potential receptors at the site are the waters of the San Francisco Bay, located approximately 50 feet east of the site, and tenants/workers at the site and site vicinity. Exposure into the San Francisco Bay is through contaminated groundwater leaching into the Bay and from contaminated stormwater draining to the Bay.

## **REGULATORY STANDARDS**

Maximum Contaminant Levels and Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The pollutants at the Site have been characterized as "hazardous waste" and "solid waste" within the meaning of the provisions of the RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of these constituents and products.

## **VIOLATIONS**

River Watch allege Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA.

River Watch allege Polluters to be past or present generators, past or present transporters, or past or present owners or operators of a treatment, storage, or disposal facility. River Watch alleges Polluters have contributed or are contributing to the past or present handling, storage, treatment, transportation, or disposal of a solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters are guilty of open dumping as that term is used in the RCRA by discharging pollutants to the open ground allowing these pollutants to discharge to both groundwater and surface waters. The Site does not qualify as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous waste. Polluters have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at the Site.

Between May 4, 2004 and May 4, 2009 ongoing violations of the RCRA as described herein have occurred. Polluters have caused or permitted, cause or permit, or threaten to cause or permit hazardous waste to be discharged or deposited at the Site where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

Past or current violations of the RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged, as River Watch has alleged in this Notice with respect to the Site. Accordingly, under these provisions, persons or entities violating the RCRA are subject to substantial liability to the United States on a per-day basis.

Polluters' use and storage of wastes at the Site between May 4, 2004 and May 4, 2009 have allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California hazardous waste regulatory programs..

Contaminant levels of petroleum hydrocarbons and toxic metals in the soil and groundwater at the Site are significantly greater than the allowable Maximum Contaminant Levels and/or Water Quality Objectives for said constituents. The petroleum hydrocarbons and toxic metals at the Site are known carcinogens and toxins. All are known to harm both plants and animals. In their concentrations at the Site and proximity to sensitive receptors such as groundwater, surface water, plants, insects, animals and humans, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

River Watch alleges that Polluters have known of the contamination at the Site since at least May 1, 2004, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site, and to continually contaminate and re-contaminate soil, ground and surface waters.

### **CONTINUING VIOLATIONS**

Some of the preferential pathways such as roads have been identified, but sewer lines, utility trenches, waterways, ditches and the like have not be examined. The geomorphology of the area indicates there exists numerous gravel lenses which are known to be conduits and can cause significant off-site migration of pollutants. Polluters have made no attempt to determine the mass of the petroleum hydrocarbons and toxic metals, making mass balance clean-up impossible to determine.

For numerous years the petroleum hydrocarbons and toxic metals at the Site have been migrating, contaminating groundwater, aquifers, private property, waters of the United States and the like. Aquifer studies have been inadequate. River Watch is concerned that due to its proximity to the Site, the San Francisco Bay has already been compromised by Polluters' contaminants. River Watch takes the position that adequate monitoring should be conducted along surface waters; and, that remediation must be conducted much more proactively to remove existing threats both to the environment and to individuals who live in the area.

For numerous years pollutants have been discharged from the Site. As required by the RCRA and California's implementation of the RCRA, Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the release; and, failed to take proper corrective action. These violations are all ongoing.

Violations of the RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future water supplies of California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe condition.

In addition to the violations set forth above, this Notice is intended to cover all Polluters' violations of the RCRA evidenced by information which becomes available to River Watch after the date of this Notice. River Watch also seeks all penalties and other enforcement provisions related to such violations.

## **CONCLUSION**

River Watch believes this Notice sufficiently states the grounds for filing suit under the statutory and regulatory provisions of the RCRA.

At the close of the notice period or shortly thereafter, River Watch intends to file suit against Polluters under the provisions of the RCRA for each of the violations alleged in this Notice and with respect to the existing conditions at the Site.


During the 90-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice.

If Polluters wish to pursue such discussions in the absence of litigation, they are encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch



will not delay the filing of a lawsuit if discussions have not commenced by the time the 90-day notice period ends.

Very truly yours,



Jack Silver

JS:lhmm

cc: Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Wayne Nastri, Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Mark Leary, Executive Director  
Calif. Integrated Waste Mgmt. Board  
1001 "I" Street  
Sacramento, CA 95814

Bruce O. Huff  
Registered Agent for Service of Process  
Kimber Management, LLC  
10 Liberty Ship Way #94  
Sausalito, CA 94965

# **EXHIBIT B**

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

May 4, 2009

Bruce O. Huff, Managing Partner  
Kimber Management, LLC  
10 Liberty Ship Way, #150  
Sausalito, CA 94965

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Mr. Huff and Kimber Management, LLC:

## **NOTICE**

Clean Water Act ("CWA" or "Act") § 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of his/her intent to sue to the alleged violator, the EPA (both local and federal), the State in which the violations occur and if the alleged violator is a State or local agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of such agency. If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent with a copy sent to the registered agent of the corporation.

Northern California River Watch (hereafter, "River Watch") is providing statutory notification to Bruce O. Huff and Kimber Management, LLC, (hereafter, "Polluters") of continuing and ongoing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by

Polluters' illegally discharging pollutants from a point source to waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit.

This Notice also addresses the ongoing violations of the substantive and procedural requirements of CWA § 402(p) and NPDES General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit"). The CWA prohibits storm water discharges without a NPDES permit. See 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

**1. The specific standard, limitation, or order alleged to have been violated**

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit pursuant to the Act, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without an NPDES permit **all surface and subsurface** discharges from to waters of the United States are illegal.

River Watch hereby notifies Polluters of the fact that they have no NPDES permit allowing the discharge pollutants from the site location and numerous point sources including the storage tanks identified in this Notice to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as CWA § 402(p), 33 U.S.C. 1342(p). The CWA prohibits storm water discharges without a NPDES permit. See 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

**2. The activity alleged to constitute a violation**

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary the CWA requires that all discharges of pollution from a point source to a water of the United States without a NPDES permit are prohibited. Polluters are discharging pollutants including petroleum hydrocarbons and toxic metals from the site location and various point sources within the site as identified in this Notice to waters of the United States.

The liability of Polluters, stems from their ownership or operation of the site or due to the activities conducted on the site by Polluters.

**3. The discharger responsible for the alleged violation.**

The discharger responsible for the alleged violations is Bruce O. Huff and Kimber Management, LLC, the addressees of this Notice, referred to throughout this Notice as "Polluters".

**4. The location of the alleged violation.**

The location or locations of the various violations are identified in the narrative section of this Notice below, and in records either created or maintained by or for Polluters which relate to Polluters' activities at the site identified in this Notice.

**5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.**

Disposition, discharge and release of pollutants can be traced as far back as at least May 1, 2004. The CWA is a strict liability statute with a statute of limitations of 5 years; therefore, the range of dates covered by this Notice is May 4, 2004 through May 4, 2009. River Watch will from time to time update and supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the Act, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation. River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Quality Control Board ("RWQCB"), GeoTracker, County Health and local police and fire departments.

**6. The full name, address, and telephone number of the person giving notice.**

The entity giving notice is Northern California River Watch, 500 North Main Street, Suite 110, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, Email US@ncriverwatch.org, referred to in this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire  
Law Offices of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. 707-528-8175  
Fax. 707-528-8675

The violations of Polluters as set forth in this Notice affect the health and enjoyment of River Watch members who reside, work and recreate in the affected area. River Watch members use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, property rights, use and enjoyment of this area is specifically impaired by Polluters' violations of the CWA as identified in this Notice.

#### **BACKGROUND/HISTORY OF DISCHARGE OF POLLUTANTS**

The site property which is the subject of this Notice is located in a light industrial area of the City of Sausalito, on the south side of Liberty Ship Way, and is approximately 3.8 acres in size. Currently, the property is developed with an office building in place.

In March of 1997, one 500-gallon gasoline underground storage tank ("UST") was removed from the site by AEI Consultants. Total petroleum hydrocarbons as gasoline (TPHg), and benzene remained in the sidewalls up to 370 milligrams per kilogram (mg/kg) and 0.066 mg/kg, respectively. The groundwater sample contained TPHg and benzene at 1,700 micrograms per liter ( $\mu\text{g/l}$ ) and 51  $\mu\text{g/l}$ , respectively, exceeding both Maximum Contaminant Levels and Water Quality Objectives set by the State of California. The stockpiled soil was not then removed from the site.

In January of 2000, the excavation was reopened and extended three feet to the north and south and five feet to the east and west from its original dimensions. Four sidewall samples and a groundwater sample were collected from the excavation. TPHg remained in the soil up to 150 mg/kg, detected in the north sidewall. TPHg and benzene were detected in the groundwater at 600 g/l and 0.76  $\mu\text{g/l}$ , respectively. An additional 3,000-gallon diesel UST was discovered on the northern portion of the property during storm drain installation activities. The tank was removed on March 29, 2000. Two samples were originally collected. Based upon their hydrocarbon content, the excavation was extended in each direction. High concentrations of TPHg, total petroleum hydrocarbons as diesel (TPHd),

total petroleum oil and grease (POG), and lead remained in the west, south, and east sidewalls of the excavation. The highest concentrations were in the east sidewall with POG at 70,000 mg/kg and lead at 1,800 mg/kg.

Following the removal of a railroad spur, AEI Consultants collected soil samples from beneath and around the former spur. Elevated concentrations of TPHg, TPHd, and POG were detected above 1,000 mg/kg in several locations up to three feet below ground surface (bgs). Rocky fill material was encountered below 3 feet, which inhibited sample collection below this depth. An excavation was opened beneath the former railroad spur on February 9, 2000. At its greatest extent, the excavation was approximately 23 feet wide, 49 feet long and between 4 and 5 feet deep. A total of six-sidewall soil samples, one excavation bottom soil sample, and one groundwater sample were collected. TPHd and POG remained in the sidewalls up to 680 mg/kg and 4,300 mg/kg, respectively. The groundwater sample contained 7,600 µg/l of TPH-d, 160 µg/l of 1,2-dichlorobenzene, and 79 µg/l of lead. All pollutants levels exceed California's Maximum Contaminant Levels and Water Quality Objectives.

During the installation of a storm drain system, the contractor identified two additional areas of visually impacted soil, which was removed by the developer and added to the stockpile created by the diesel tank removal and over-excavation. Light non-aqueous phase liquid (LNAPL) was observed floating on the water table in a number of borings. Sample analytical data revealed the bulk of the dissolved phase hydrocarbons were indicative of diesel fuel or fuel oil range hydrocarbons, with very low light range fuel components. In addition to hydrocarbons, several areas of high concentrations of lead, chromium VI, and nickel were observed. All of these toxic metals exceed California's Maximum Contaminant Levels and Water Quality Objectives. The source and extent of these toxic metals has not been determined. LNAPL remains in the area of the former diesel UST although regular removal efforts have reduced its measurable thickness. Residual adsorbed phase petroleum is present on site and around the release area.

The site is located at the margin of Richardson Bay on the eastern side of the Marin Peninsula, at a surveyed elevation of approximately 10 feet above mean sea level. The site is relatively flat, at the base of a slope rising to the southeast. Sediments of the site are mapped as artificial fill with the bedrock to the southeast comprised of mélange of the Franciscan Formation. The northeastern portion of the site and the land to the north appear to have been reclaimed from the Bay prior to the 1940s, based on aerial photograph review.

Drilling work has identified recent engineered import fill to depths of 1 to 3 feet throughout the site with other fill present locally to a depth of up to 10 feet. Drilling on the southern side of the property building has revealed well graded sand with varying clay and

gravel content to a depth of 4.5 to 7 feet bgs, underlain by an approximately 3 foot section of wet, high organic content, bay mud clay. Below this, well graded sandy gravels were encountered to boring termination, at 11 to 12 feet bgs. To the north of the property boundary, soils to the east (AEI-19, AEI-23 to AEI-25) side tend to consist of predominately finer materials: clays with varying silt, sand and gravel content. The easternmost boring, AEI-18 encountered poorly graded medium sand to a depth of 7 feet underlain by well graded sand. Westward, gravel, clayey gravel, and silty and gravelly sand are present at varying depths and thicknesses interbedded with sandy and gravelly clay. In permeable sediments, groundwater was observed during drilling at depths ranging from approximately 4 to 7 feet bgs. Based on monitoring data, the water table beneath the site exists at approximately 4 to 6 feet bgs at mean tide. Water levels are tidally influenced. The nearest arm of the Bay is approximately 50 feet east of the property at neutral tide. A detailed history of the use of the USTs or the volume of material released is unknown. Mass of the plume has not been calculated.

Four soil vapor borings were advanced at and in the vicinity of the site (SV-1 through SV-4) during the recent investigation activities. The concentrations of TPHg and benzene in SV-2 exceeded their respective Effects Screening Levels values.

The two primary potential receptors at the site are the waters of the San Francisco Bay, located approximately 50 feet east of the site, and tenants/workers at the site and site vicinity. Exposure into the San Francisco Bay is through contaminated groundwater leaching into the Bay and from contaminated stormwater draining to the Bay.

### **CONTINUING VIOLATIONS**

Existing records indicate that pollutants continue to be discharged from the Site to waters of the United States. Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Polluters as identified in this Notice are prohibited by law. Beneficial uses of surface waters are being affected in a prohibited manner by these violations. The EPA and the State of California have identified Polluters' operations at the site as a point source, the discharges from which contribute to violations of applicable water quality standards.

From May 4, 2004 through May 4, 2009, Polluters have violated the CWA by failing to acquire a NPDES permit and for discharging pollutants into waters of the United States without a NPDES permit. Each and every discharge is a separate violation of the CWA.

These enumerated violations are based upon review of the RWQCB files and Geotracker files for Polluters, other files publically available and interviews with area



residents. In addition to all of the above violations, this Notice covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or failed to submit) to the RWQCB and/or other regulatory agencies during the period May 4, 2004 through May 4, 2009. This Notice also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the RWQCB, Geotracker or other regulatory agencies.

Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the above-described violations of the Act subjects the violator to a penalty per day/per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Act pursuant to CWA § 505(a) and § 505(d), 33 U.S.C. §§ 1365(a) and (d), and such other relief as is permitted by law. Lastly, CWA § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

### **CONCLUSION**

River Watch believe this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under the Act against Polluters for the violations enumerated herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified and described in this Notice. However, if Polluters wish to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,



Jack Silver

JS:lmh

cc: Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

Wayne Natri, Regional Administrator  
US. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812

Bruce O. Huff  
Registered Agent for Service of Process  
Kimber Management, LLC  
10 Liberty Ship Way #94  
Sausalito, CA 94965

Office of Jack Silver  
Box 5469  
Osa, CA 95402-5469



Citizen Suit Coordinator  
U.S. Dept. of Justice  
Environmental & Natural Resource Division  
Law and Policy Section  
P.O. Box 4390  
Ben Franklin Station  
Washington, DC 20044-4390

